

VKB LANDBOU (PTY) LTD ("VKB")**REG NO: 2015/165238/07****AGREEMENT AND CONDITIONS FOR THE STORAGE AND HANDLING OF GRAIN****1. INTRODUCTION AND AGREEMENT**

- 1.1 This document sets out the standard conditions in terms of which all grain and oilseed (**'the products'**) will be handled and stored at VKB's silos. When the customer delivers products to VKB or acquires products from the silos, the following agreement and the conditions contained herein (**'this/the agreement and conditions'**) between VKB and the customer shall become effective.
- 1.2 The customer agrees to this agreement and conditions in one or more of the following ways:
 - 1.2.1 By signing at the end of this document; or
 - 1.2.2 By signing VKB's conditions of credit containing such assent; or
 - 1.2.3 By signing VKB's conditions of sale and/or application for membership containing such assent; or
 - 1.2.4 By signing and/or accepting any documents forming part of the storage chain, including, but not limited to, delivery instructions, receipts, silo certificates, purchasing agreements, dispatch documents, circulars, crop arrangements and public notices in which this agreement and conditions are incorporated by means of a reference; or
 - 1.2.5 By implication through the delivering, storing or loading (receipt) of any products at any of VKB's silo's.
- 1.3 However, it is not a validation requirement for this agreement and conditions that the customer must sign it.
- 1.4 Copies of this agreement and conditions are available free of charge from VKB's offices in Reitz (31 Pres CR Swart Street) and Modimolle (90 Chief Albert Luthuli Street) to all customers storing, or who intend storing, products with VKB. At the customer's request, this agreement and conditions will be sent via prepaid registered mail, facsimile, e-mail or delivered by hand, depending on the details of the customer in VKB's possession. This agreement and conditions are also available at VKB's silos and its website, www.vkb.co.za.
- 1.5 VKB therefore, by means of a reference, shall incorporate this agreement and conditions into each grain services transaction.
- 1.6 **'Annexure A'** attached hereto includes a list of all VKB's silos and describes in which region each silo resorts.
- 1.7 This agreement and conditions is also available in Afrikaans, and should there be any uncertainty or discrepancy between this English version and the Afrikaans version, the provisions of the Afrikaans version will prevail.

2 PLACE OF DELIVERY AND STORAGE

- 2.1 The customer must deliver products to VKB at a silo where VKB will store the products in question, subject to the availability of sufficient space for such products and/or the grade of the products.
- 2.2 Subject to this agreement and conditions, VKB undertakes to store the products until they are, as instructed by the customer, later transferred wholly or partly, to a silo certificate, a third party, sold to VKB, or despatched to a third party.
- 2.3 On delivery of the products at a VKB silo, the risk regarding the products will pass to VKB. This risk shall end as soon as the products are extracted from the silo.
- 2.4 The customer must, for the purpose of each delivery of a product, complete VKB's delivery instructions and sign such forms. The customer shall be bound by the said delivery instructions and the completed details contained therein. By permitting a representative to complete the document and/or to sign it and/or to deliver the products, the customer confirms the authority of the representative completing and/or signing such delivery instruction, and/or delivery of the products in question.

3 STORAGE PERIOD

The maximum period for the storage of each product indicated hereunder, shall be one year, which, for each product, shall be valid for the following periods:

Dry beans: 1 March to 28/29 February or part thereof;

Maize: 1 May to 30 April or part thereof;

Manna: 1 March to 28/29 February or part thereof;

Millet: 1 March to 28/29 February or part thereof;

Sorghum: 1 May to 30 April or part thereof; and

Soya beans: 1 March to 28/29 February or part thereof;

Sunflower: 1 March to 28/29 February or part thereof; and

Wheat: 1 October to 30 September or part thereof.

4 PROVISION CONCERNING QUALITY CONTROL

- 4.1. VKB shall determine the quality of the products on receipt and dispatch thereof on the basis of the grading regulations for each product as determined by the Agricultural Product Standards Act 119 of 1980 ('**the grading regulations**'), or any other applicable legislation, as amended from time to time, as well as applicable standards and methods in the grain industry, and VKB's practices applicable to the specific silo facility and equipment.
- 4.2. If the quality of the products delivered by the customer does not meet the prescribed requirements for such products, VKB, in its sole discretion, may decide whether the products can be stored in terms of this agreement and conditions. VKB shall exercise this discretion in a reasonable manner.
- 4.3. The customer shall accept VKB's grading as *prima facie* correct, unless the customer disputes such grading forthwith, in which event, the dispute shall be dealt with in accordance with clause 15 below.

- 4.4. The customer guarantees that products delivered to VKB for storage, have been produced and handled in accordance with the provisions of the Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Act 36 of 1947 and the Foodstuffs, Cosmetics and Disinfectants Act 54 of 1972. These laws require that products be treated only with legal chemical substances, according to prescripts, and that they are therefore suitable for human and animal consumption.

5 DETERMINATION OF MASS

- 5.1. VKB shall determine the mass of each load delivered by the customer, or each load dispatched or offloaded on behalf of the customer, by using a legally stamped mass meter certified in terms of the Trade Metrology Act 77 of 1973 by duly authorised authorities and/or institutions.
- 5.2. The customers shall accept the mass determination shown on the product receipt or offload receipt, as *prima facie* correct and final unless the customer, on whom the onus of proof shall rest, provides proof to the contrary.
- 5.3. If, on delivery, the moisture content of the products exceeds the basal moisture content, the storage mass shall be adjusted further to the basal moisture content at which the various products are stored. The basal moisture content for the various products are as follows:

Dry Beans: 12%; Maize: 12.5%; Manna: 12%; Millet: 12%; Sorghum: 12.5%; Soya Beans: 12.0%; Sunflower: 9.0%; and Wheat: 12.5%

- 5.4. The adjustments with regards to the storage mass, as referred to in clause 5.3, will be calculated as follows:

Maximum moisture allowed: X%

Basal moisture: Y%

Mass adjustment with regards to moisture:

$$A x \left[1 - \frac{100 - x}{100 - y} \right]$$

Where:

A = Mass of the load (Gross minus Tare minus Screenings)

X = Actual moisture percentage

Y = Required moisture percentage

- 5.5. If the moisture content of the products exceeds the basal moisture content and VKB agrees to accept the products in question, subject to drying, the drying cost shall be for the customer's account.
- 5.6. Due to the client delivering the product on an unclean basis, VKB shall have the right to apply the following handling adjustments in order to determine the nett mass of the product delivered to VKB:

Maize: 1%

Sorghum: 2.28%

Wheat: Actual percentage foreign material and screenings + 0.5%

Soya beans: Actual percentage foreign material + 0.5%

Sunflower: Actual percentage foreign material + 0.5%

6 STORAGE

The customer agrees that its products may be mixed with products of approximately the same kind and quality. VKB's liability shall be limited, as far as practicable, to deliver products of approximately the same kind and quality when the storage agreement expires. This liability shall not be construed to mean that identical products will be redelivered.

7 INSURANCE

- 7.1 VKB undertakes to insure the products, together with any other products stored in its silos, against insurable risks.
- 7.2 If, for any reason whatsoever, the products in the silo are damaged or destroyed to such an extent that it becomes impossible for VKB to meet its aforementioned delivery commitments from that silo or any other silo, VKB, in its sole discretion, shall be entitled to pay out the value of the products in question to the customer. This value shall be calculated against the ruling SAFEX price, minus the transport differential for the silo in question on the day on which VKB decides that it has become impossible to meet its aforementioned delivery commitments. If the product is not traded on SAFEX, the parties must attempt in good faith to agree on the cash value of that product. If such an attempt should fail, an independent appraiser (appointed by the parties), shall determine the cash value at his/her discretion. A decision of this nature shall be final and binding.
- 7.3 VKB shall exercise all discretions in terms of this clause in a reasonable manner.
- 7.4 The parties agree that, in order to limit the cost of VKB's services to the customer, VKB shall not, under any circumstances and for any reason whatsoever, be liable for the customer's consequential damage.
- 7.5 VKB may take any steps that, at its discretion, are necessary to protect the products against any potential damage that may be caused to it.

8 DISPATCHING OF PRODUCTS

- 8.1 Extraction of products shall only take place at least 10 business days after delivery of a written notice to VKB, in which the grade, approximate mass, date of despatch and time, address to which the consignment must be delivered, and transport arrangements must be stated.
- 8.2 All products shall only be despatched to the customer on an ex-silo basis, after the customer has settled all fees payable in terms of this agreement and conditions.
- 8.3 No products may be withdrawn without a valid instruction having been issued by VKB.
- 8.4 If the grading and specification of the product dispatched by VKB to or on behalf of the customer differs from that of the product initially delivered for storage by the customer, VKB, at its discretion, which discretion must be exercised in a reasonable manner, shall be entitled to deliver other products as close as practically possible, to the initial grading and specification. In such an event, the customer shall pay to VKB, or VKB to the customer, depending on the case, remuneration according to the difference in value between the grades determined by SAFEX, and in the event that the product does not trade on SAFEX, the reasonable value as formally communicated to VKB's customers from time to time.
- 8.5 If the products received by the customer do not correspond with the grade (with due allowance for that mentioned above), mass or moisture content despatched to him, or if

it is contaminated with insects, the customer must inform VKB accordingly and not offload the products in question. Notice by telephone, as well as notice in writing, must reach VKB within 12 hours after receipt of the products by the customer. Failing which, the customer shall be obliged to accept the products as if it had been delivered, as dispatched. If weekends and public holidays are applicable, notice must be provided within 48 hours.

- 8.6 Regarding the content of clause 8.5, the parties agree that, owing to the nature of the products losing their identity and potential ownership when they are mixed, as well as owing to the different circumstances that could have a negative effect on these natural products, it is crucial and reasonable that the notice periods be made as short as possible.

9 REMUNERATION

- 9.1. As remuneration for the service rendered by VKB to the customer, the customer shall pay a tariff/cost for the handling and/or storage and/or other services, as amended from time to time, to VKB. These tariffs are available from VKB's offices in Reitz (31 Pres CR Swart Street) and Modimolle (90 Chief Albert Luthuli Street).
- 9.2. It is placed on record that the tariffs/costs referred to in clause 9.1 may from time to time be amended, in the sole discretion of VKB, which tariffs/costs may also vary from silo to silo.
- 9.3. In all cases, the remuneration tariffs shall exclude Value-Added Tax (VAT).
- 9.4. Storage costs are payable within 1 month following the month in which the storage costs originated.
- 9.5. Storage costs in respect of paid silo certificates are payable immediately, after which further storage costs for the products in terms of clause 9.4, shall be payable.
- 9.6. All other silo service charges, administration and silo certificate costs shall be payable within 3 calendar days after VKB has provided the customer with an original invoice, or as otherwise agreed upon in writing.
- 9.7. Interest at Standard Bank's prime lending rate, plus 3 percentage points are calculated daily on outstanding and overdue accounts, capitalized on a monthly basis.
- 9.8. VKB exercises a lien on all products stored in the silos for the payment of all sums due by the customer to VKB. VKB retains the right to refuse to deliver products to anyone at all and to retain such products until effective payment of all sums due to VKB in respect of such products are settled. The customer authorises VKB herewith irrevocably and unconditionally to realize these products or as much of these products as may be necessary, either by selling them or by acquiring them for its own account against the ruling SAFEX price, minus the transport differential in respect of the silo in question on the day on which these products are realized accordingly. VKB undertakes not to exercise this lien before 10 calendar days have elapsed since the amount due became payable and the customer has been issued with a letter of demand.
- 9.9. A certificate signed by a manager of VKB (whose appointment does not need to be proven), in which the amount due and payable is certified, serves as *prima facie* proof of the amount due and the indebtedness in question.

10 PAYMENT

Payment of any sum due by the customer to VKB shall take place only when the amount due is paid into and credited to VKB's bank account. If the sum due is paid by means of a bank transfer or internet bank service, the onus shall be on the customer to inform VKB via e-mail at graan@vkb.co.za.

11 SILO CERTIFICATES

VKB shall issue a silo certificate(s) to the customer or a person nominated by him/her in writing, 2 calendar days after a written application for such certificate is received at VKB's offices in Reitz (31 Pres CR Swart Street) and after all sums due in accordance with such certificate(s) have been settled.

12 DISPOSAL TO THIRD PARTIES

If the customer disposes of the products or any part thereof to a third party, VKB shall amend its records in respect of such products to reflect the third party as the customer of such products, only if VKB receives an application, duly signed by the customer, for the disposal in question at VKB's offices in Reitz (31 Pres CR Swart Street). Any third party shall also be bound by this agreement and conditions.

13 NOTICES

VKB nominates 31 President CR Swart Street, Reitz, 9810 as the address to which all notices in terms of this agreement and conditions must be delivered.

13.1. The customer chooses as his *domicilium citandi et executandi* and the address to which all notices must be delivered, as the address appearing on the receipt/offload voucher issued at the silo.

13.2. The parties have the right to change the aforementioned addresses with 7 calendar days' notice in writing to the counterparty.

13.3. Notices must be delivered by hand, be sent via facsimile, email, or prepaid registered mail.

13.4. Any notice received after 16:00 on a business day shall be deemed to have been received on the next business day.

13.5. Such notice, unless proven to the contrary, shall be deemed to have been received if:

13.5.1. delivered by hand during normal business hours in a correctly addressed envelope to a responsible official at the chosen address on the date of delivery;

13.5.2. via facsimile or via email, on the date on which it was forwarded, if sent during normal business hours, or on the first business day after which it was forwarded, if sent outside of business hours; and

13.5.3. via registered mail, 5 business days after it was mailed.

14 LEGAL COSTS

If any party has to take legal steps to enforce this agreement and conditions, the unsuccessful party shall pay the other party's legal costs calculated on the same scale as that between attorney-and-own-client.

15 DISPUTES AND ARBITRATION

15.1. Grading and/or Technical Disputes on delivery of products

15.1.1. Any dispute regarding the grading or technical nature of products must first be discussed with the relevant silo manager.

- 15.1.2. Should the customer and the relevant silo manager not be able to resolve the said dispute, VKB's Manager: Grain Services should be contacted for further handling and subject thereto that the customer's load(s) must be kept within VKB's silo premises until the dispute is resolved.
- 15.1.3. Should it happen that the dispute is still not resolved after intervention by VKB's Manager: Grain Services, a sample (by way of a double tube sampler) of the relevant load(s) should be taken in the presence of both parties, which sample should be sealed properly and sent to the South African Grain Laboratory (SAGL) for analysis. The results of such analyses will be final and binding on both parties.
- 15.1.4. All reasonable costs associated with the dispute resolution procedure should, in all cases, be borne by the party against whom a finding is made.
- 15.1.5. Both parties agree that should the customer move any of its loads (under dispute) from the relevant VKB silo premises, such dispute will not be investigated any further and the customer will be liable for all costs already incurred in attempting to resolve the dispute.

15.2. Arbitration

- 15.2.1. Subject to the conditions of clause 15.1, should a dispute between the parties in respect of any matter relating to this agreement and conditions, or the cancellation thereof, VKB, at its sole discretion, may resolve to adjudicate such a dispute/disputes by means of arbitration, or by a court having appropriate legal jurisdiction.
- 15.2.2. The aim is to conclude the arbitration process within 21 business days and on an informal basis.
- 15.2.3. The arbitration shall take place in Reitz and the parties are entitled to legal representation. If the arbitration process cannot be settled in an informal manner, the provisions of the Arbitration Act 42 of 1965 shall apply.
- 15.2.4. The arbitrator's decision shall be final and binding on the parties. Any party may apply to make a decision of this kind an order of court.
- 15.2.5. The provisions contained in clause 15 shall by no means derogate from the rights and obligations of the parties granted in terms of the National Credit Act 34 of 2005 (if applicable).

16 LIMITATION OF LIABILITY AND INDEMNITY

- 16.1 VKB shall not incur any liability towards the customer for any act which is performed in good faith in accordance with the terms of this agreement and conditions, including VKB's interpretation and implementation of any grading regulations applicable to the products. The customer indemnifies and holds VKB harmless against any claim (including claims by the customer) for damages which may be instituted against VKB, subject thereto that such indemnity will be limited to claims for damages which arose from VKB's in good faith performance of its obligations in accordance with the terms of this agreement and conditions.
- 16.2 Any claim against VKB in accordance with the terms of this agreement and conditions shall only be limited to direct damages and the customer shall not be entitled to institute any claim against VKB for any indirect or consequential losses or damages due to any cause whatsoever.

17 GENERAL

- 17.1 Any reference to 'business days / business day', will include any day except a Saturday, Sunday or official public holiday.
- 17.2 VKB shall not accept liability for any delay in the delivery of products or any part thereof if caused by any act of God, action by the government, a strike, explosion, floods, riots, a war, an accident, embargo, legislation, civil commotion, unrest or any other cause or event outside of VKB's control. The customer will not be able to institute any claim against VKB for any delay or non-delivery in terms of this clause.
- 17.3 This agreement and conditions constitute the entire agreement between the parties and no terms, conditions, amendments, anomalies, changes or mutual cancellation shall be valid, unless put in writing and signed by both parties.

ANNEXURE A

VRYSTAAT REGION	LIMPOPO REGION
<u>Contact Details</u>	<u>Contact Details</u>
Physical Address: 31 Pres CR Swart Street, Reitz, 9810	Physical Address: 90 Chief Albert Luthuli Street, Modimolle, 0510
Fax: 058 863 3317	Fax: 058 863 3317
E-mail: graan@vkb.co.za	E-mail: graan@vkb.co.za
ASCENT SILO	LEHAU SILO
CORNELIA SILO	NABOOMSPRUIT (MOOKGOPHONG) SILO
DANIELSRUS SILO	NYLSTROOM (MODIMOLLE) SILO
FRANKFORT SILO	NUTFIELD SILO
JIM FOUCHE SILO	POTGIETERSRUS (MOKOPANE) SILO
MEMEL SILO	ROEDTAN SILO
PETRUS STEYN SILO	SETTLERS SILO
REITZ SILO	WARMBAD (BELA-BELA) SILO
TWEELING SILO	
VILLIERS SILO	
VREDE SILO	
WARDEN SILO	
WINDFIELD SILO	
WILGESPRUIT	
GOEDGEDACHT	